

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

March 7, 2006

The Rhode Island Ethics Commission held its 5th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, March 7, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair Patricia M. Moran

Barbara Binder, Vice Chair James C. Segovis

George E. Weavill, Jr., Secretary Frederick K. Butler

Richard E. Kirby Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:06 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open Session held on February 21, 2006. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was

VOTED: To approve the minutes of the Open Session held on February 21, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James C. Segovis, and Ross Cheit.

ABSTENTIONS: Richard E. Kirby, Patricia M. Moran, and Frederick Butler.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of June S. Speakman, Ph.D., a member of the Barrington Town Council. The petitioner and Michael A. Ursillo, the Town Solicitor of Barrington, were present. Staff Attorney Gramitt presented the Commission Staff recommendation.

Staff Attorney Gramitt informed that he would amend the draft opinion to include the representations provided by the petitioner in a

supplemental letter dated March 2, 2006. In response to Commissioner Kirby, Staff Attorney Gramitt informed that the petitioner's spouse will not be financially impacted by the Town's decision of how to develop the park. Commissioner Butler pointed out that while the petitioner's spouse is personally invested in the initiative to create baseball fields on the park, he is not financially invested in the initiative so there is no conflict under the Code.

Commissioner Segovis referred to the language of section 5(a) and asked whether the "or otherwise" provision applies. Staff Attorney Gramitt noted that in the past the Commission has considered the remoteness of the relationship to the petitioner. In response to Commissioner Binder, Solicitor Ursillo informed that there are five Town Councilors. Commissioner Binder noted that this situation is transparent as it is known that the petitioner's husband is an active volunteer in the Little League. Commissioner Kirby stated that the "or otherwise" language applies to the impact on the petitioner, not her spouse.

Commissioner Cheit disclosed that he is from Barrington, but that he has no children in the Little League, and would not have a conflict.

Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was

VOTED: To issue an advisory opinion, attached hereto, to June S.

Speakman, Ph.D., a member of the Barrington Town Council, amended to include the petitioner's additional representations.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, and Ross Cheit.

NOES: Frederick Butler.

The next advisory opinion was that of the Stephen J. Enos, a Lieutenant on the East Providence Police Department. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.

Commissioner Butler disclosed that he did not know the petitioner, but that he may know his family members, and would not be biased. The petitioner informed that the Commissioner knows his cousins.

In response to Commissioner Cheit, the petitioner informed that he will primarily use his license in Rhode Island and that he will inform his clients upfront that he cannot work in the jurisdiction of East Providence. He also represented that if he needs information from East Providence that he will find another way to get it or he will drop the case. In response to Commissioner Binder, the petitioner informed that the application for his license will require him to appear before the City Council and that his application is subject to the approval of the Police Chief. Commissioner Moran asked whether

this opinion addresses whether the petitioner can get the license or addresses what he can do after getting the license. Staff Attorney Leyden replied that the opinion gives the petitioner guidance on how to act once he has a license. Commissioner Cheit commented that such advice seems too hypothetical at this time.

Commissioner Kirby noted that the petitioner may not qualify for the license and expressed concern with the petitioner serving as a police officer while also working as an investigator, particularly with regard to advertising his investigative work. The petitioner informed that he would not advertise that he is a police officer. In response to Commissioner Weavill, the petitioner informed that he is looking into the feasibility of such work in anticipation of retirement. He informed that he has not yet narrowed his investigative work to civil or criminal matters although he anticipates doing more internal investigations regarding employee conduct. He represented that he would not do any criminal work while serving as a police officer given his working relationship with many individuals in the field.

Commissioner Weavill expressed concern over such work given that Rhode Island is such a small state. Staff Attorney Leyden responded that past advisory opinions limited a petitioner's work in their jurisdiction and that here it is East Providence. Chair Lynch stated that he is concerned about the petitioner's use of the database and commented that the petitioner would have to be extremely careful in using any knowledge he obtained from his police service. The

petitioner stated that use of the database is well documented and that its use is audited on the state and federal levels. He informed that he can access the system as the Shift Commander, but stated that he rarely does so as he relies on others to provide him with such information. In response to Legal Counsel Managhan, the petitioner explained that audits take place every six months and that there is a paper trail because all users of the system must enter their queries in a log and that there is a computer trail.

Commissioner Kirby noted that the petitioner has to apply for the license in East Providence and that the license is a property right with which the Commission cannot interfere. He stated that he would amend the opinion so that it states that it addresses how the petitioner should act after obtaining a license, not just whether he can apply. Staff Attorney Leyden stated that the Question Presented and the Conclusion sections of the opinion could be amended to state that the opinion also covers the petitioner's operation of his investigation business. Chair Lynch requested that this amendment be made to the opinion. Commissioner Weavill expressed his concern that the risk of entanglement is too great for him to conduct private investigations while still an active officer. Commissioner Moran stated this is a potential problem, but one that the petitioner determines based on whether he follows the Commission's advice.

Upon motion made by Commissioner Moran, duly seconded by Commissioner Binder, it was

VOTED: To issue an advisory opinion, attached hereto, to Stephen J. Enos, a Lieutenant on the East Providence Police Department, amended to include that the opinion covers the petitioner's operation of his business as a private investigator.

AYES: James Lynch, Sr., Barbara Binder, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

NOES: George E. Weavill.

The next advisory opinion was that of Shirley Mello, a Middletown Town Councilor. The petitioner was not present. Staff Attorney Leyden commented that she noticed that she her telephone message light was on this morning, but that she unable to yet check her messages and noted that one may be from the petitioner. She then presented the Commission Staff recommendation.

Commissioner Kirby noted that the construction community is small and he would like to know the history of the business relationships of the petitioner's spouse. Staff Attorney Leyden stated that the petitioner informed that she does not get involved with her husband's business and does not know such information. Commissioner Cheit stated that there may be a problem if there are few competitors. Commissioner Binder commented that she was uncomfortable with the appearance of impropriety presented. Commissioner Butler

noted that the issue is foreseeable impact regardless of whether the petitioner expresses that she does not get involved in her husband's business. Commissioner Kirby stated that the Commission needs the petitioner here to answer its questions. The Commissioners decided that the petitioner should not have safe harbor while her request is tabled and requested that the petitioner be so informed. Executive Director Willever commented that such information is provided to the petitioner in writing.

Upon motion made by Commissioner Segovis, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To continue the advisory opinion request of Shirley Mello, a Middletown Town Councilor, until the petitioner can attend and to remove safe harbor.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Robert Ritacco, a potential candidate for the Westerly Town Council or Westerly School Committee. The petitioner was not present. Staff Attorney Gramitt presented the Commission Staff recommendation. He noted that he gave the petitioner informal guidance over the telephone, however, the petitioner wanted a written opinion.

Upon motion made by Commissioner Segovis, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert Ritacco, a potential candidate for the Westerly Town Council or Westerly School Committee.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

At approximately 10:12 a.m., upon motion was made by Commissioner Butler, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), to wit:

a.) To approve the minutes of Executive Session held on February 21, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

At approximately 10:20 a.m., the Commission returned to Open Session.

Chair Lynch reported out that in Executive Session the Commission voted to approve the minutes of the Executive Session held on February 21, 2006.

Staff Attorney Leyden addressed the Commission to inform that she checked her voicemail messages and that petitioner Mello had left her a message at 7:57 this morning stating that she could not attend as her father is in the hospital. She stated that she will call her and update her on the opinion.

The next order of business was discussion of Pending Legislation. Staff Attorney Gramitt stated that a new bill, House Bill 7820, was introduced since the 2006 Legislative Update he provided at the last meeting. He handed out information on this bill and informed that it prohibited any elected official from accepting any gift. He informed that the bill does not amend the Code of Ethics although it impacts the Commission's jurisdiction. After discussion, the Commission directed, by consensus, Staff Attorney Gramitt to informally reach out to the sponsors and inform them of the jurisdictional issue and that it is too vague and presents enforcement issues.

Staff Attorney Gramitt then went over the four bills discussed at the last meeting. He presented a summary of House Bill 7072, which

would repeal the Roney Amendment. After discussion, the Commission, by consensus, directed Staff Attorney Gramitt that the Commission would take no position on this bill.

Staff Attorney Gramitt then presented summaries of two bills - Senate Bill 2799 and House Bill 7455 - that both relate to the Public Accountability and Reform Act of 2006. Staff Attorney Gramitt went over the subsections of the bills. He noted that the first five items in these bills, so designated in his informational sheet to the Commission, regard lobbying, which is not our jurisdiction. He stated that the sixth item prohibits members of the Commission from being the business associate of a registered lobbyist and contains no grandfathering provision. He noted that this would impact lawyers in big and small law firms, and pointed out that it would have impacted former Commissioner Goldberg. Commissioner Segovis noted that such members can simply recuse from matters as necessary. Legal Counsel Managhan questioned whether this would pertain to the Rhode Island Bar Association. After discussion, the Commission directed, by consensus, Staff Attorney Gramitt that, if action is taken on this bill, to express the Commission's concern with the problematic over-breadth of the bill's language and that it needs further clarification. In response to Legal Counsel Managhan, Staff Attorney Gramitt informed that he finds out one or two days before a bill will come before a committee.

Regarding the seventh and eighth items under these bills, Staff

Attorney reported that the bills require the Commission to provide a program on ethics education and lobbying activities and reporting to particular position holders, and requires such individuals to participate in such a program within six months of being sworn into office. He noted that the Commission's staff already provides ethics training and that the staff cannot educate on lobbying activities as the staff does not have any expertise in those areas. He also noted that item eight only requires attendance for new position holders and does not mandate a refresher class for acting officials. Chair Lynch expressed his interest in having attendance required. Commissioner Binder suggested pointing out certain provisions that the Commission opposes, including how to handle enforcement problems. The Commission, by consensus, agreed with this position.

Staff Attorney Gramitt stated that he would express the Commission's concerns through either testimony or letter. He summarized that the Commission is in support of educational training, but the Commission supports a broader mandate requiring attendance for all officials, removing the Commission from teaching lobbying laws, and a higher budget request to carry out such a program.

As for the ninth item under these bills, Staff Attorney Gramitt reported that it adds a financial disclosure statement requirement that general officers list all sources and amounts of income. The Commissioners discussed the purpose of such a requirement and noted that it would discourage individuals from seeking public office. Chair Lynch

expressed his opinion against this provision and questioned why it only applies to general officers. Commissioner Segovis noted that historically general officers are the most influential public positions and that limiting the requirement makes it more manageable to monitor. Commissioner Cheit commented that it would just add a question to our statement and that he was in favor of it. The Commission, by consensus, directed Staff Attorney Gramitt to keep them informed of this provision and that the Commission would take no position on it.

Lastly, Staff Attorney Gramitt reviewed Senate Bill 2798, which would change the appointment process for the Commission and require advice and consent of the Senate. He noted that Common Cause voiced concerns that the current appointment procedure violates separation of powers and could subject the Commission to court challenges. The Commissioners also expressed concern about separation of powers and Commissioners not being appointed in a timely manner. In response to Commissioner Segovis, Staff Attorney Gramitt informed that four Commissioners are serving in expired terms and that two more will expire soon. The Commission, by consensus, directed Staff Attorney Gramitt that the Commission would take no position on this bill.

The next order of business was discussion of Commission Regulations. Chair Lynch and Commissioner Binder stated that their subcommittees had nothing to report at this time.

The next order of business was the Director's Report. Executive Director Willever reported on the pending complaints and advisory opinions.

The next order of business was Introduction of Chief of Ethics, Benjamin Bycel and Staff of the Connecticut Office of State Ethics. Executive Director Willever introduced Mr. Bycel, he and his staff were here today visiting our office for educational purposes. Mr. Bycel introduced his staff. He thanked Executive Director Willever for arranging this visit and shared with the Commission his professional background and his observations of the meeting.

The next order of business was New Business. There was none.

At approximately 11:30 a.m., upon motion made by Commissioner Weavill, duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.
Secretary